

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MONTOREY DANYELL HARPER,
Plaintiff,
v.
SHERIFF, SAN DIEGO,
Defendant.

Case No.: 16cv765 BTM(JLB)

**ORDER GRANTING MOTION TO
PROCEED IN FORMA
PAUPERIS AND DISMISSING
COMPLAINT**

On March 31, 2016, Plaintiff filed a Complaint and a Motion to Proceed In Forma Pauperis ("IFP"). For the reasons discussed below, the IFP Motion is granted, and the Complaint is dismissed.

DISCUSSION

I. Motion to Proceed IFP

Upon review of Plaintiff's affidavit in support of his IFP Motion, the Court finds that Plaintiff has made a sufficient showing of inability to pay the filing fee required to prosecute this action. Accordingly, Plaintiff's IFP Motion is **GRANTED**.

II. Failure to State a Claim and Frivolous Action

Although the Court will allow Plaintiff to proceed IFP, Plaintiff's Complaint must be dismissed. The Court is under a continuing duty to dismiss an IFP case whenever the Court determines that the action is "frivolous or malicious" or "fails to state a claim on which relief may be granted." 28 U.S.C. § 1915(e)(2)(B)(i),(ii).

Plaintiff alleges violation of his civil rights and infliction of emotional distress and seeks \$1,000,000,000,000,000,000 in damages. The only facts alleged by Plaintiff are: "On 3/28/2016 at 6:00 a.m. Civil Rights violation discrimination

1 against Plaintiff because of Sex, the city having its employee place his foot out on
 2 top of the Plaintiffs feet.” Essentially, Plaintiff alleges that a city employee stepped
 3 on Plaintiff’s feet. These allegations do not support a claim for violation of
 4 constitutional rights or intentional infliction of emotional distress. Therefore, the
 5 Complaint fails to state a claim upon which relief may be granted.

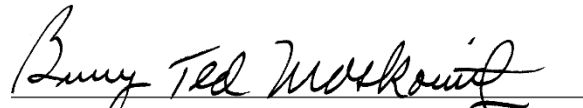
6 In addition, the Court finds that this action is frivolous. An action is frivolous
 7 if it lacks an arguable basis in either law or fact. Neitzke v. Williams, 490 U.S. 319,
 8 324 (1989). Because this action is frivolous, the Court **DISMISSES** it pursuant to
 9 28 U.S.C. § 1915(e)(2)(B)(i). The Court does not grant Plaintiff leave to amend.
 10 See Lopez v. Smith, 203 F.3d 1122, 1127 n.8 (9th Cir. 2000) (“When a case may
 11 be classified as frivolous or malicious, there is, by definition, no merit to the
 12 underlying action and so no reason to grant leave to amend.”).¹

13 14 **CONCLUSION**

15 For the reasons discussed above, Plaintiff’s motion to proceed in forma
 16 pauperis is **GRANTED**, and Plaintiff’s Complaint is **DISMISSED** without leave to
 17 amend as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B)(i). The Clerk shall close
 18 this case.

19 **IT IS SO ORDERED.**

20 Dated: April 5, 2016

21 
 22 Barry Ted Moskowitz, Chief Judge
 23 United States District Court
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 28 ¹ The Court observes that it appears that Plaintiff is abusing the legal process. On the same day that
 Plaintiff filed this action, Plaintiff filed four other cases in this district. All of Plaintiff’s Complaints allege
 miscellaneous violations of civil rights.